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Attorney for Creditor  
Carvana, LLC, their successors and assigns

**IN THE UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA – LAS VEGAS DIVISION**

In re:

CARNELL PERRY,  
  
Debtor.

**CASE NO.: 18-14251**

**Chapter 13**

**CARVANA, LLC, THEIR SUCCESSORS  
AND ASSIGNS'S MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

**("Vehicle")**

**Date: December 27, 2018**

**Time: 10:30 a.m.**

Carvana LLC ("**Movant**" or "**Creditor**"), through undersigned counsel, applies for an order vacating the stay to permit Movant to exercise its non-bankruptcy remedies in connection with a vehicle described as a 2016 Mazda 6 bearing the VIN: JM1GJ1U52G1426221 ("**Vehicle**"). The basis for this motion is set forth in the following memorandum of points and authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. FACTUAL BACKGROUND:**

1           1. This court has jurisdiction over the subject matter of this Motion pursuant to the  
2 provisions of 28 U.S.C. §157, 1334, and 11 U.S.C. §362.

3           2. The Contract is secured by a Lien on a vehicle described as a 2016 Mazda 6 bearing the  
4 VIN: JM1GJ1U52G1426221 (“**Vehicle**”). A true and correct copy of the Lien and Title Information  
5 Report is attached to the Motion as **Exhibit “B”**.

6           3. The Borrower defaulted on the monthly payments under the terms of the Contract.

7           4. On February 26, 2018, Debtor filed a Chapter 13 Petition in the District of Nevada, Las  
8 Vegas Division, Petition No.: 18-10971 (the “**First Petition**”).

9           5. In connection to Debtor’s First Petition Debtor filed a Chapter 13 Plan in which Debtor  
10 proposed to pay Movant’s claim directly.

11           6. Movant did not receive a post-petition payment from the Debtor.

12           7. In fact, Movant has never received a monthly payment from Debtor.

13           8. On July 18, 2018, the Debtor’s First Petition was dismissed for failing to tender Chapter  
14 13 Plan payments.

15           9. On July 19, 2018, (the “**Debtor**”) filed the Instant Petition, Petition No.: 18-14251 (the  
16 “**Second Petition**”).

17           10. Payments under the contract come due monthly in the amount of \$383.00, with one  
18 final payment due in the amount of \$221.07.

19           11. The first payment due under the Contract was due February 15, 2018.

20           12. Debtor has not tendered a single payment due under the Contract.

21           13. Debtor is due and owing for the February 15, 2018, and all subsequent payments for a  
22 total default in the amount of \$3,472.00.

23           14. The total owed to Movant is \$15,705.38.

24           15. The Vehicle is included in Debtor’s Chapter 13 Plan. Debtor provides for cure of  
25 Creditor’s pre-petition in the amount of \$383.00 and direct payment of Movant’s post-petition  
26 monthly mortgage payment.

27           16. Debtor’s disposable income is \$0.00. Debtor lists \$2,724.00 in monthly combined  
28

1 income. Debtor does not list any car payments on Debtor's Schedule "J". Debtor has \$23.00 in net  
2 income on Debtor's Schedule "J", without including any automobile payments.

3 17. Debtor indicates that he does not anticipate his income increasing or his expenses  
4 decreasing on Debtor's Schedule "I" and Schedule "J".

5 18. Debtor proposes plan payments in the amount of \$627.00 for plan months three through  
6 sixty. Debtor does not have the income to fund his plan. Debtor's net income is at most \$23.00.  
7 This leaves a deficit in the amount of \$604.00 per month to fund his plan as proposed.

8 19. Debtor plan would need to be amended to provide for the cure of all arrears owed to  
9 Creditor and Creditor's full post-petition monthly mortgage payment.

10 20. Debtor simply cannot afford to reorganize his debts.

11 21. A 2016 Mazda 6 in average trade-in condition would be valued at \$13,625.00. pursuant  
12 to Nada Guides. A true and correct copy of the Nada Guides for a 2016 Mazda 6 is attached to the  
13 Motion as **Exhibit "C"**.

14 22. As of the date of this Motion, the total amount due and owing under the Note is  
15 \$15,705.38.

16 **II. RELIEF FROM STAY FOR "CAUSE":**

17 23. It is not known what, if any equity there is in the Vehicle since Movant has not had the  
18 opportunity to inspect the Vehicle and does not have information on the Vehicle's condition.

19 24. As of the date of this Motion, the total amount due and owing under the Note is  
20 \$15,705.38.

21 25. However, a 2016 Mazda 6 in average trade-in condition would be valued at \$13,625.00.  
22 pursuant to Nada Guides. Thus, there is no equity available in the Vehicle to protect Movant's  
23 interest.

24 26. Furthermore, pursuant to 11 U.S.C. §361 and §362(d), Movant is entitled to adequate  
25 protection of its interest in the Vehicle. Adequate protection can be offered in the form of cash or  
26 periodic payments.

27 27. Movant believes that Debtor is unwilling or unable to provide adequate protection to the  
28 movant and there is no probability that adequate protection can be afforded to Movant within

1 reasonable time in light of the significant payment default.

2 28. Debtor is due and owing for the February 15, 2018, and all subsequent payments for a  
3 total default in the amount of \$3,472.00.

4 29. By reason for the foregoing, Movant is entitled to relief from the stay under 11 U.S.C.  
5 (d)(1) and (d)(2).

6 **WHEREFORE**, Movant requests the Court enter an order for the following relief:

- 7 1. Vacating the automatic stay as it applies to the Vehicle;  
8 2. That Fed.R.Bankr.P., Rule 4001(a)(3) be waived and the stay terminate upon entry of  
9 this Order; and  
10 3. For such other and further relief as the court deems just and proper.

11  
12 THE LAW OFFICE OF MICHELLE GHIDOTTI

13 Dated: November 16, 2018

By: /s/ Jennifer R. Bergh, Esq.  
JENNIFER R. BERGH, SBN 14480